IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

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LINDA BERGEY and JAMES R. BERGEY, SR.,

Plaintiffs,

vs. **NO.:**

BOY SCOUTS OF AMERICA
d/b/a PHILMONT SCOUT RANCH BSA,

CIV-05-0536 /WPL

Defendant.

COMPLAINT FOR NEGLIGENCE RESULTING IN PERSONAL INJURIES AND MONETARY DAMAGES

COME NOW the Plaintiffs, Linda Bergey and James R. Bergey, Sr., by and through their attorneys, PATRICK A. CASEY, P.A., by Patrick A. Casey, Esq., and for their cause of action against the Defendant herein, state and allege as follows:

JURISDICTION, VENUE AND JURY TRIAL REQUEST

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1332(a) and the Plaintiffs seek damages in excess of $75,000.00.

2. Venue is proper in this district pursuant to 28 U.S.C. §1391(c).

3. Plaintiffs request trial by jury.

THE PARTIES

4. Plaintiffs, Linda Bergey and James R. Bergey, Sr., are residents of Bishopville, Maryland.

5. Defendant, Boy Scouts of America, is a Texas corporation authorized to do business in the State of New Mexico and owns and operates the Philmont Scout Ranch BSA in Colfax

County, New Mexico Its agent for service of process is Keith Gallaway, Philmont Scout Ranch, Route 1, Box 35, Cimarron, New Mexico, 87714.

6 Upon information and belief, and at all times material hereto, Sarah Doe, Eric Doe and John Doe, were employees, agents or servants of Defendant, Boy Scouts of America, and were acting within the scope of their duties and employment at Philmont Scout Ranch BSA for Defendant, Boy Scouts of America. The full names or residency of these three individuals are not known and they are therefore named herein in pseudonym.

GENERAL ALLEGATIONS

7. In early July, 2002, Plaintiff, Linda Bergey, came to Philmont Scout Ranch BSA, (hereafter "Philmont"), to participate, as a paying guest, in an eight-day Cavalcade back-country horseback trail ride with Philmont Scout Ranch Cavalcade 706 CX 02.

8. On Sunday, July 7, 2002, at approximately 8:00 a.m., Plaintiff, Linda Bergey, along with other guests gathered at the stables to prepare for their initial shakedown Cavalcade horseback trail ride training All were inexperienced horseback riders, including Linda Bergey.

9 The group entered one of the corrals, referred to herein as Corral A, where they were given initial horsemanship lessons by the Defendant's employees, agents or servants, Sarah Doe, the Head Horseman, and Eric Doe and John Doe, the Wranglers The lessons included caring for, saddling and bridling the horses, which were then assigned to each member of the group The riders then began the procedure of brushing, saddling, feeding and bridling their assigned horse

10 During this time, Sarah Doe directed one of the Wranglers to bring a "new green packhorse" into the Corral A where it was tied by a Wrangler to the fence next to where Steven

Bergey and the horse he was assigned were posted. The "new green packhorse" promptly spooked Steven Bergey's horse causing it to set back up into yet another participant's horse, thereby creating an unsafe situation for all the riders.

11. Sarah Doe then directed the Wrangler John Doe to take the "new green packhorse" to the other end of Corral A from where the group was located. He then lead the "new green packhorse" from where it had been tied and walked it outside of the corral fence and between Corral A and another arena, Corral B, then re-entering Corral A through another gate on the far end of that arena.

12. Sarah Doe at this time informed the group that they were short of horses and that this "new green packhorse" was a new horse which had never been used before on the trail ride.

13. Upon re-entering Corral A, either Eric Doe or John Doe, attempted to tie the "new green packhorse" to a post when it broke away, charging at other horses that were tied up along the corral fence causing them to move toward the fence and away from the "new green packhorse." The "new green packhorse" stopped long enough for the Wranglers to catch it and put a yellow slicker over its head then they tied the "new green packhorse" to a post in Corral B adjacent to where the group was going to work with their assigned horses.

14. The group was then instructed toride their horses into that other arena, Corral B, and they proceeded into Corral B; the "new green packhorse" was seen tied to the post to the left of the gate through which they entered. The group's horses were nervous and were whinnying loudly as they passed the "green pack horse."

15. While the group was giving their equipment a final check, one of the Wranglers took the "new green packhorse" from where it was tied to the post and began walking it around

with a yellow rain slicker over its head even though they knew, or should have known, that this horse was not suitable to use as a packhorse in training with the horses and riders of this Cavalcade as it had already been apparent it was not suitable to use as a packhorse in training.

16. At about 12:00 noon, after a Wrangler had checked the group's saddles, they were lined up behind Sarah Doe and were to walk their horses in a circle in Corral B. Sarah Doe told Eric Doe, Wrangler, that the group was ready and gave him orders to return the "new green packhorse" in to the group of horses and riders.

17. Eric Doe, Wrangler, got the "new green packhorse" and within moments it broke lose from Eric Doe and was bucking and running full speed toward the group of riders with its head low and extended, its ears back and its mouth open showing his teeth. As the "new green packhorse" was running full speed across Corral B toward the group the long yellow pack cover on the horse was flapping in the wind and extending over the height of the horse as it ran directly in back of the circle towards two of the younger riders.

18 Linda Bergey was riding her horse in the group circle near the center of Corral B and after the "new green packhorse" reached the back of the circle where the two younger riders were, it then turned a circle and went at other riders.

19 Linda Bergey's horse headed away from the "new green packhorse" in an attempt to get away but was unsuccessful and the "new green packhorse" collided into her horse hitting it on the left flank with such force and violence causing her horse to lose its balance and fall to the ground with her still in the saddle.

20. Linda Bergey's horse fell over onto its right side, falling on her and driving her body and head into the corral ground resulting in injures and damages hereinafter set forth.

COUNT I
NEGLIGENCE OF DEFENDANTS

21. All of the foregoing allegations are incorporated at this point as though fully set forth in detail.

22. Boy Scouts of America d/b/a Philmont Scout Ranch BSA, was under a duty to exercise care commensurate with the foreseeable risk of danger created by the erratic behavior demonstrated by the "new green packhorse" in the course of the morning of July 7, 2002throuogh its employees, agents ro servants, had the duty to remove the offending horse from the string that would participate in the Cavalcade horseback trail ride.

23. The Defendant's employees, agents or servants, Sarah Doe, Eric Doe and John Doe, were charged with the duty to exercise care commensurate with the reasonably foreseen risk of danger created and demonstrated by the "new green packhorse" in the course of the morning of July 7, 2002

24 Because of the unruly, erratic and dangerous propensities and behavior created by the "new green packhorse" the Defendant, through its employees, agents or servants, knew or should have known, that it was foreseeable that a guest participating in the Cavalcade, especially novice, inexperienced riders, could be injured if the "new green packhorse" were brought back into the string of horses to be used in the trail ride.

25. Defendant, acting through Sarah Doe, Eric Doe and John Doe, breached its duty and failed to exercise care commensurate with the reasonably foreseeable risk of danger to the novice guest riders from the unruly "new green packhorse" which had demonstrated by its dangerous propensities toward the guest riders, including Linda Bergey, and their horses and was

negligent in the following regards

A. Failing to exercise reasonable care in maintaining and operating the Cavalcade horseback trail ride in a safe and proper manner so as to prevent the foreseeable risk of harm to its guests, who were novice and inexperienced riders, including Linda Bergey.

B. Failing to use properly trained and experienced packhorses for its Cavalcade activities.

C. Failing to recognize the propensity and dangerous disposition of the "new green packhorse" to cause injury to the participants, and by placing them at a greater risk of injury by returning the "new green packhorse" to the group of riders in the Corral B when moments prior to this, the same horse has exhibited dangerous, unruly and unmanageable behavior while in Corral A

D Failing to remove and not utilize the "new green packhorse" in the Cavalcade shakedown preparations and participation in the trail ride.

E. The failure of Sara Doe, Eric Doe and John Doe to anticipate contingencies which would have required an emergency response or a change of plan in order to provide for the safety and well-being of the Cavalcade participants, including Plaintiff, Linda Bergey.

F. Failing to implement a plan for appropriate procedures and guidelines for use of properly trained and experienced packhorses in the Cavalcade equine activity so as to ensure the safety of its guest participants.

G Failing to provide experienced and adequately trained and knowledgeable staff with horsemanship experience as horse handlers for the Cavalcade with the full knowledge that such staffing practices would place the novice and inexperienced guest participants at risk of injury such as occurred to Plaintiff, Linda Bergey.

H Failing to prohibit the use of horses such as the "new green packhorse" in activities with the participants in a Cavalcade, who themselves were novice and inexperienced in horseback riding and handling, thereby creating a foreseeable risk of harm to the participants such as which occurred to Plaintiff, Linda Bergey.

26 All acts as alleged to have been done by the employees, agents or servants of the Defendant BSA, and were done within the scope of their duties or employment, contract, agency, or apparent agency.

27 All acts complained of herein were authorized, participated in, or ratified by Defendant BSA or their administrators, managers, supervisors, officers or directors

28. As a direct and proximate result of the negligent acts as set forth above, Plaintiff, Linda Bergey, suffered personal injuries, including but not limited to a cerebral concussion, cerebral contusion and diffuse axonal injury, with resulting prolonged unconsciousness, memory loss, functional deficits, speech and language deficits, cognitive and communication deficits, manual and gait deficits, neuromuscular deficits, disturbances in visual perception, as well as right side rib fracture, right side clavicle fracture, gastrostomy placement for nutrition, tracheostomy tube and conversion to a fenestrated tracheostomy in order to allow her to speak some, all of which required medical intervention and treatment, rehabilitative services, neuropsychological services, and she has suffered pain, suffered agony, and has suffered mental anguish; and upon information and belief, she will continue to suffer the same in the future, all to her damage in a

sum as may be proven at trial of this case.

29 As a further direct and proximate result of the negligent acts of Defendant BSA, or its agents, employees or servants, Plaintiff, Linda Bergey, incurred and became responsible for medical expenses including the costs of ambulance and air-ambulance expenses, various hospital, medical, physical therapy, massage therapy, rehabilitative and retraining services, all in a sum in excess of $237,000.00 and, as she is informed and believes, she will in the future incur medical, physical therapy, massage therapy, rehabilitative service expenses for care and treatment of her injuries, and the consequences thereof in a sum as may be proved at the trial of this cause.

30 As a further direct and proximate result of the negligent acts of Defendant BSA, or its agents, employees or servants, Plaintiff, Linda Bergey, who was employed in the banking industry for many years and at the times material hereto, had been working as a part-time substitute school teacher lost wages and wage earning capacity on a permanent basis, all to her damage in such a sum as may be proven at the trial of this cause.

32 As a further direct and proximate result of the negligent acts of Defendants BSA, or its agents, employees or servants, Plaintiff, Linda Bergey, has lost her ability to fully perform household services in the past and has lost her ability to perform household services in the future on a permanent basis, all to her damage in such a sum as may be proven at the trial of this cause.

33 As a further direct and proximate result of the negligent acts of Defendant BSA, or its agents, employees or servants, Plaintiff, Linda Bergey, has incurred hedonic damages and has lost the enjoyment and quality of life, and, as she is informed and believes, will continue to suffer hedonic damages and to lose enjoyment and quality of life in the future on a permanent basis, all to her damage in such a sum as may be proven at the trial of this cause

WHEREFORE, Plaintiff, Linda Bergey, prays for Judgment in her favor and against the Defendant as follows:

A. For such compensatory damages occasioned by the negligent conduct of Defendant as may be proved at the trial of this cause;

B. For her past and future medical expenses incurred and to be incurred;

C. For her past and future lost wages and wage earning capacity;

D. For her lost household services;

E. For her loss of enjoyment and quality of life,

F. For her costs of suit incurred herein;

G For pre-judgment and post-judgment interest, at the rate allowed by law, on all such amounts awarded from the date of filing this Complaint and after judgment is entered; and

H. For such other and further relief as the Court deems proper.

COUNT II – BREACH OF CONTRACT

33. All of the foregoing allegations are incorporated as this point as though fully set forth in detail.

34. Plaintiff, Linda Bergey and James R. Bergey, Sr., contracted with Defendant BSA and Philmont Scout Ranch to participate in the Cavalcade back country trail ride and that it be conducted in conformance with the manner advertised by Defendant and in conformance with acceptable safety standards for such activity.

35 Defendants breached the contract and in breaching the contract, the Plaintiffs, Linda

Bergey and James R. Bergey, Sr., lost the value of the costs and charges for the Cavalcade and the week of guest residency at Philmont Scout Ranch in a sum as may be proved at the trial of this cause.

WHEREFORE, Plaintiffs, Linda Bergey and James R. Bergey, Sr., pray for Judgment in their favor and against the Defendant BSA, as follows:

A. For compensatory damages occasioned by the breach of contract by Defendant BSA as may be proved at the trial of this cause.

B. For Plaintiffs' cost of suit incurred herein;

C. For pre-judgment and post-judgment interest, at the rate allowed by law, on all such amounts awarded from the date of filing this Complaint and after judgment is entered; and

D. For such other and further relief as the Court may conclude to be proper

COUNT V – LOSS OF CONSORTIUM

36. The foregoing allegations are incorporated as this point as though fully set forth in detail

37. As a direct and proximate result of the negligent acts of the Defendants as aforestated, Plaintiff, James R. Bergey, Sr., has lost the society, companionship and relational interests with the Plaintiff, Linda Bergey

WHEREFORE, Plaintiff, James R. Bergey, Sr., prays for judgment against Defendant BSA as follows:

A. For compensatory damages occasioned by the loss of consortium

B. For the cost of suit incurred herein;

C For pre-judgment interest as allowed by statute on all amounts from the date of service of this Complaint and for interest on the judgment as allowed by law.

D For such other and further relief as the Court may conclude to be proper.

Respectfully Submitted

PATRICK A. CASEY, P.A.

By: ______________________

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